

Chapter 3

SELECTION

3-1 EXAMINATIONS

3-1.1 Authority

The department of civil service shall prepare or approve examinations for all classified positions. Examinations are referred to as *appraisal methods* in these rules.

3-1.2 Content and Method

Appraisal methods must assess relevant, job-related knowledge, skills, abilities, and other qualifications necessary for successful job performance. The department of civil service may use another organization's appraisal results.

3-1.3 Application

The department of civil service shall establish procedures for persons seeking positions in the classified service.

3-1.4 Reasonable Accommodations

The department of civil service shall make reasonable accommodations in its application and appraisal process for a person with a disability who makes a reasonable request for accommodation in advance. The department

of civil service may offer an alternative evaluation method for a person with a disability if the person is unable to participate in the regular appraisal process. The department of civil service is not required to make an accommodation that would cause undue hardship.

3-1.5 Integrity of Process

To be considered for appraisal or appointment, an applicant shall comply with the established procedures and processes.

(a) **Prohibited practices.** During the application, appraisal, or appointment process, a person shall not do any of the following:

- (1) Make any false statement or omission of a material fact.
- (2) Misrepresent education or experience.
- (3) Engage in deception or fraud.
- (4) Cheat.
- (5) Compromise the integrity of the appraisal process.
- (6) Violate rule 2-7 [Drug and Alcohol Testing].

(b) **Sanctions.** If the department of civil service finds that an applicant has engaged in any prohibited act, the department may do any of the following:

- (1) Cancel or limit the applicant's eligibility for state employment.
- (2) Require the separation of the applicant from state employment.
- (3) Impose any other or additional sanction that is appropriate.

[Rule 3-1 last amended effective March 18, 2001]

3-2 APPLICANT POOLS AND RECALL LISTS

3-2.1 Applicant Pool

The department of civil service may establish and maintain applicant pools. The department of civil service may divide applicant pools by geographic area, organizational unit, occupational specialty, type of appointment, or other criteria. The state personnel director shall issue regulations for the duration and use of applicant pools. A person's eligibility to remain in an applicant pool or to be referred for a position is determined under the civil service rules and regulations in effect at the time the department of civil service refers names of qualified applicants to an appointing authority.

3-2.2 Removal from Applicant Pool

The department of civil service may remove a person from an applicant pool for any of the following reasons.

- (a) Appointment.
- (b) Separation or retirement from state service.
- (c) Evidence that the person is unable to perform satisfactorily, with or without reasonable accommodations, the essential duties of the job.
- (d) Evidence of conduct that indicates that the person is unfit or unsuitable for appointment.
- (e) Conduct that violates rule 3-1.5 [Integrity of Process].
- (f) Expiration of an applicant pool or eligibility.

3-2.3 Recall Lists

An employee is eligible to be placed on a recall list only if the employee (1) gained status from an indefinite appointment and (2) is laid off, demoted, or otherwise displaced for reasons of administrative efficiency. Recall lists are not created or maintained for classifications that are protected from the application of employment preference in rule 2-5 [Employment Preference] or applicable regulations.

3-2.4 Removal from Recall Lists

The department of civil service may remove a person from a recall list for any of the following reasons.

- (a) Appointment.
- (b) Failure to respond to an inquiry regarding possible employment.
- (c) An indication of lack of interest in an employment opportunity.
- (d) Failure to accept employment.

- (e) Separation or retirement from state service.
- (f) Evidence that the person is unable to perform satisfactorily, with or without reasonable accommodations, the essential duties of the job.
- (g) Evidence of conduct that indicates that the person is unfit or unsuitable for appointment.
- (h) Conduct that violates rule 3-1.5 [Integrity of Process].
- (i) Expiration of recall rights.

[Rule 3-2 last amended effective March 18, 2001]

3-3 APPOINTMENTS AND JOB CHANGES

3-3.1 Process

All appointments, promotions, and job changes in the classified service must be made in accordance with the civil service rules and regulations. Any person appointed or promoted must be certified as qualified in accordance with and subject to the civil service rules and regulations. The state personnel director shall administer the certification of all appointments and promotions.

3-3.2 Demotion

- (a) **Notice.** If an appointing authority intends to demote an employee, the appointing authority shall give prior written notice of the specific reasons for the demotion to the employee.
- (b) **Conditions.** An appointing authority may demote an employee under any of the following circumstances:

- (1) The employee is not performing satisfactorily.
- (2) The employee's position is reclassified downward.
- (3) The demotion is requested by the employee and approved by the appointing authority.
- (4) The position occupied by the employee is abolished.
- (5) The employee is displaced by the return to duty of another employee entitled to the position.
- (6) The employee is displaced by another employee with more seniority during a reduction in force.
- (7) The employee does not receive a satisfactory probationary service rating, as authorized in rule 3-6.3(b) [Unsatisfactory Service: Employee with Status].

3-3.3 Emergency Appointment

When emergency conditions require immediate action, an appointing authority is authorized to make an emergency appointment for up to 28 calendar days. The state personnel director may approve an extension of an emergency appointment up to an additional 28 calendar days. An appointing authority cannot reappoint a person to a second consecutive emergency appointment within the same principal department, autonomous entity, or agency of convenience. An emergency appointment is authorized only when made in conformity with the civil service regulations governing emergency appointments.

3-3.4 Hire

An appointing authority may appoint a qualified candidate to a position in the classified service as authorized by and in accordance with the civil service rules and regulations. A candidate may be qualified for appointment in one or more of the following ways:

- (a) The candidate is listed in an appropriate civil service applicant pool.
- (b) The candidate meets the civil service qualifications for appointment to a designated classification.
- (c) The candidate is qualified after review by the department of civil service.

3-3.5 Lateral Job Change Between Departments

Any two appointing authorities may authorize a lateral job change for an employee between departments or autonomous entities. The employee may be moved to a different classification only if (1) the employee previously attained status in the classification, (2) the job change is based on the civil service preauthorized lateral job change list, or (3) the employee meets the civil service qualification requirements. A lateral job change between departments or autonomous entities requires the agreement of the employee and the approval of the department of civil service.

3-3.6 Lateral Job Change within a Department

An appointing authority may authorize a lateral job change for an employee within the employee's current department or autonomous entity. The employee may be moved to a

different classification only if (1) the employee previously attained status in the classification, (2) the job change is based on the civil service preauthorized lateral job change list, or (3) the employee meets the civil service qualification requirements. A lateral job change within a department or autonomous entity does not require the agreement of the employee. However, an employee may request a lateral job change.

3-3.7 Promotion

An appointing authority may appoint a qualified employee candidate to another position at a higher classification level as authorized by and in accordance with the civil service rules and regulations. A candidate may be qualified for appointment in one or more of the following ways:

- (a) The candidate is listed in an appropriate civil service applicant pool.
- (b) The candidate meets the civil service qualifications for appointment to a designated classification.
- (c) The candidate is qualified after review by the department of civil service.

3-3.8 Recall

A person is recalled in accordance with the civil service rules and regulations in effect at the time of the recall. Unless the rules or regulations provide otherwise, appointment is first limited to persons on recall lists.

3-3.9 Reinstatement

A classified employee who achieved status and who is demoted or separated while in satisfactory standing is eligible for reinstatement.

An appointing authority may reinstate an eligible person to (1) the classification in which the person last achieved status before the separation or demotion or (2) to a classification at the same or lower classification level for which the person is qualified. A person's eligibility for reinstatement is limited to 3 years after separation or demotion. However, the state personnel director may extend eligibility in the regulations to meet work force needs.

[Rule 3-3 last amended effective March 18, 2001]

3-4 CLASS CLUSTERS

- (a) **Approval of class clusters.** If jointly requested by parties engaged in secondary negotiations, the state employer may request that the state personnel director approve a class cluster for use in a principal department, autonomous entity, or agency of convenience. The state personnel director has the discretion to approve, deny, or limit a request to create a class cluster. A decision by the state personnel director to approve, deny, or limit a request to create a class cluster is final and cannot be appealed.
- (b) **Class clusters for nonexclusively represented employees.** An appointing authority may use an approved class cluster for authorized transactions involving nonexclusively represented employees as provided in the civil service rules and regulations.
- (c) **Class clusters for exclusively represented employees.**
 - (1) **Relation to collective bargaining.**
 - (A) The creation of a class cluster is a classification and appointment issue and is a prohibited subject of bargaining. A class cluster cannot be created or included in a secondary

collective bargaining agreement unless approved in advance by the state personnel director.

- (B) After a class cluster has been approved by the state personnel director, the use of an approved class cluster for job changes, layoff, or recall is a mandatory subject of bargaining in secondary negotiations.

- (2) **Use of class cluster.** An appointing authority may use the approved class cluster for job change, layoff, or recall transactions authorized in an approved secondary collective bargaining agreement.

[Rule 3-4 added effective January 1, 2002]

3-5 RELATION TO COLLECTIVE BARGAINING

An appointing authority shall make all appointments in accordance with the civil service rules and regulations, unless a provision in a collective bargaining agreement regarding reassignment, transfer, layoff, or recall permitted by rule 3-4 [Class Clusters] or rule 6-3 [Commission Authority] provides otherwise.

[Rule 3-5 last amended effective January 1, 2002]

3-6 PROBATION AND STATUS

3-6.1 Probationary Period

- (a) **New employee without status.** A newly appointed classified employee who does

not have status in the classified service when appointed must satisfactorily complete a working test period, called a probationary period, and receive a final satisfactory probationary rating as provided in rule 2-3 [Performance Ratings] as a condition of continued employment.

- (b) **Employee with status.** An employee with status who is appointed to a new classification must satisfactorily complete a working test period, called a probationary period, and receive a final satisfactory probationary rating as provided in rule 2-3 [Performance Ratings] as a condition of continued appointment in that position.
- (c) **SES and SEMAS exceptions.** This rule does not apply to persons appointed to positions in the senior executive service (SES) and the senior executive management assistant service (SEMAS).

3-6.2 Length of Probationary Period

- (a) **Minimum length.** The minimum length of a probationary period is 12 calendar months of full-time employment or 18 calendar months of less than full-time employment.
- (b) **Extension of probationary period.** If the department of civil service or the appointing authority determines that (1) the probationary period has been insufficient to adequately test the performance of a probationary employee or (2) the performance of a probationary employee has been unsatisfactory, the department or the appointing authority may extend the probationary period for an employee. Any extension beyond an additional 6 calendar months requires the approval of the state personnel director. The department or appointing authority shall give written notice of the extension

of the probationary period to the employee.

- (c) **Leave without pay during probationary period.** If a probationary employee is placed on a leave of absence without pay or on extended sick leave, the period of the leave of absence does not count toward completing the probationary period and the length of the probationary period is automatically extended for an additional period equal to the length of the employee's absence.

3-6.3 Unsatisfactory Service

- (a) **Employee without status.** If an employee without status does not perform satisfactorily during the probationary period, as provided in rule 2-3 [Performance Ratings], the appointing authority may dismiss or otherwise discipline the employee at any time during the probationary period or within 28 calendar days after the probationary period ends. The appointing authority shall give notice of a dismissal or other discipline to the employee and the department of civil service no later than 28 calendar days after the probationary period ends.
- (b) **Employee with status.** If an employee with status is appointed to a new classification and does not perform satisfactorily during the probationary period, as provided in rule 2-3 [Performance Ratings], the appointing authority may, at any time during the probationary period or within 28 calendar days after the probationary period ends, (1) dismiss or otherwise discipline the employee or (2) rescind the appointment and demote the employee.

3-6.4 Satisfactory Service; Notice

If an employee's service during the probationary period is satisfactory, the appointing authority shall give notice to the employee and

the department of civil service within 28 calendar days after the probationary period ends.

3-6.5 Grievance of Probationary Rating or Discipline

(a) **Probationary employee without status.** A probationary employee without status who is dismissed or otherwise disciplined may grieve the discipline only within the departmental steps of the civil service grievance procedure. The employee cannot appeal a final determination of the appointing authority to the department of civil service or the civil service commission unless the employee alleges that the discipline violated rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection].

(b) **Probationary Employee with status.**

(1) **Recision of appointment and demotion.** A probationary employee with status (1) who receives an interim rating or *unsatisfactory* probationary or follow-up rating or (2) whose appointment is rescinded for any reason and who is demoted to a classification level not less than the level occupied at the time of the appointment, may grieve the rating or the recision and demotion as provided in rule 8-1 [Grievances] and the applicable regulations. In any appeal of its final grievance decision, the appointing authority need only establish a rational basis for the rating or the recision and demotion. This subsection does not apply to the revocation of an appointment authorized in rule 3-7 [Revocation of Appointment].

(2) **Other discipline.** A probationary employee with status who is dismissed or disciplined other than as

provided in subsection (b)(1) may grieve the rating or discipline as provided in rule 8-1 [Grievances] and the applicable regulations.

3-6.6 Status

An employee who has been appraised, qualified, properly appointed on an indefinite or limited-term basis, and who has satisfactorily completed the probationary period, has status while the employee remains continuously employed in the classified service. An employee who has attained status and later accepts an appointment to a position at a different classification level continues to have status at the former classification level while the employee remains continuously employed in the classified service. An employee whose appointment is revoked under rule 3-7 [Revocation of Appointment] cannot earn status at that classification and classification level or credit for qualification purposes.

[Rule 3-6 last amended effective January 1, 2002]

3-7 REVOCATION OF APPOINTMENT

3-7.1 Review of Appointments

Every appointment in the classified service is expressly subject to review by the department of civil service. If the department determines that an appointment violated a civil service rule or regulation, the department may order corrective action, including revocation of the appointment.

3-7.2 Methods of Review

The department of civil service may review any appointment as part of the department's audit function or as the result of a technical appointment complaint.

(a) Audit review.

(1) Revocation of appointment. If the department of civil service audits an appointment and determines that the selection, appointment, or certification violated a civil service rule or regulation, the department may order corrective action, including revocation of the appointment. The department shall give written notice of the revocation to the appointing authority and the employee whose appointment is revoked.

(2) Subsequent technical complaint. An employee whose appointment is revoked, or the employee's appointing authority, may file a technical appointment complaint regarding a staff revocation order within 14 calendar days after the date the revocation order was issued. If a timely technical appointment complaint is filed, the revocation order is automatically stayed pending a decision or further order of the technical review officer.

(b) Technical appointment complaint by candidate.

(1) Technical appointment complaint authorized. If an unsuccessful candidate files a timely technical appointment complaint under rule 8-3 [Technical Complaints] and the technical review officer determines that the challenged appointment violated a civil service rule or regulation, the officer may order corrective action, including revocation of the challenged appointment.

(2) Notice to incumbent. If a technical appointment complaint is filed, the incumbent employee whose appointment is being challenged in the complaint is entitled to notice of

the complaint and an opportunity to defend the appointment. If the technical review officer revokes an incumbent employee's appointment, that incumbent employee is bound by the determination of the technical review officer, including revocation of the incumbent employee's appointment.

3-7.3 Effect of Revocation of Appointment

When the department of civil service or a technical review officer revokes an appointment, the employment status of the employee whose appointment is revoked is determined as follows:

(a) Employee with continuing status. If the employee had continuing status at the time of the appointment, the employee is to be retained in a position within the principal department or autonomous agency that appointed the employee at a classification and level in which the employee had continuing status at the time of the appointment. If no such position is available within the department or agency at the time of the revocation, the employee may exercise employment preference.

(b) Employee without continuing status. If the employee had no continuing status in the classified service at the time of the appointment, the appointing authority shall separate the employee from state employment, unless the employee has otherwise been properly appointed to another position.

[Rule 3-7 last amended effective January 1, 2002]

[End of Chapter 3]